

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Development Act

Judgment reserved on: 19.09.2008

Judgment delivered on: 07.01.2009

W.P(C)No.6779 OF 2008

AYODHYA DEVI

..... Petitioner

Through: Mr. J.P.Sengh, Senior Advocate with Ms. Garima Kapur,
Advocate.

versus

DDA and ANOTHER

....Respondents

Through: Mr. Gaurav Sarin and Ms. Charul Sarin, Advocates for respondent
no.1/DDA.

VIPIN SANGHI, J.

1. By this order I proceed to dispose of the preliminary objection raised by the respondent DDA to the maintainability of the present writ petition on the ground that the petitioners are guilty of approaching the Court with unclean hand, resorting to suppression, concealment and misstatement of material facts and abusing the process of the Court. It is also argued that the jurisdiction being exercised by this Court under Article 226 of the Constitution being discretionary, on account of the aforesaid conduct of the petitioners, this Court should refuse to exercise its said jurisdiction in the matter and dismiss the writ petition without even going into the merits of the case.

2. The present writ petition has been preferred by 28 individuals against the Delhi Development Authority (DDA), respondent No.1 and Kangra Adarsh Cooperative Group Housing Society (respondent No.2) primarily praying for

the reliefs that the respondent No.1 i.e. DDA should issue show cause notice, grant personal hearing to each of the petitioners and pass speaking, sealing cum demolition orders before proceeding with the demolition of the unauthorized constructions raised by them, in compliance of order dated 20.9.2004 in WP(C) No.3771/2002 titled as 'Shri Sukh Ram Gangotia and Others versus DDA and others' and in WP(C) No.3823/2002 titled as 'Shri K.P. Bhangalia and Others versus DDA and Others'. It is further prayed that directions be issued to the DDA to apply the same norms relating to addition/alteration as applied by the respondent in respect of flats constructed by the DDA, to flats constructed by a co-operative group housing society. It is prayed that respondent No.1 DDA be restrained from carrying out any demolition of additional constructions effected by the Petitioners without granting personal hearing to each of the Petitioners.

3. The petitioners state that they are all members of the respondent No.2 Society. They state that respondent No.2 upon allotment of land by the DDA constructed the flats which were allotted to its members. It is stated that as against sanctioned FAR of 150 the construction was done by utilizing FAR of only 86. The petitioners state that the flats were constructed on two floors i.e. ground floor and first floor and all the petitioners are owners of the flats on the first floor. Admittedly, some of the members of the respondent No.2 Society including the petitioners raised constructions on the roof of the flats i.e. above the first floor in the year 1995. It is stated that the ground floor allottees too raised additional construction in the front as well as in the back portion of their flats. The petitioners allege that the ground floor owners encroached upon the service lanes, covered the sewerage/water lines and obstructed the free movement/passage inside the respondent Society. The DDA issued a show cause notice on 31.07.1997 to the respondent Society to explain as to why action be not taken against its members for raising unauthorized construction under the Delhi Development Act. On 12.12.1997 the DDA passed an order of demolition/sealing of the flats.

4. Respondent No.2 Society challenged the aforesaid order dated 12.12.1997 of the DDA before this Court by filing the WP(C) No.5666/1997. The said writ petition came up before the Court on 31.12.1997 and was disposed of on the same day by the following order: 'CW 5666/97 and CM 10899/97 Mr. Ramdhan has put in appearance on behalf of the Respondent. It has been contended by Mr. Rohtagi that the Society at the initial stage when the flats were constructed utilized 86.23 FAR instead of 150, which was permissible at the relevant time. In any event, the construction which has been raised is

without the sanction of the respondent authority. Mr. Rohtagi prays that the writ petition may be treated as representation by the petitioners. The respondent will hear the petitioners before passing the final order of sealing or demolition. The petitioners to present before Director (Building) Vikas Sadan on 6.1.1998 at 2.00 .m. Till the objections are decided by the Director (Building), the respondent will not give effect to the letter dated 12.12.1997. With these observations, the writ petition and application stands disposed of. Dasti to both parties.’

5. After the passing of the aforesaid order, various developments took place, which are not of much relevance. Eventually, the DDA on 23.04.2002 issued a communication, inter alia, to the respondent Society that the earlier sealing- cum-demolition order date 12.12.1997 had not been implemented due to the filing of the Society’s writ petition in this Court. However, the matter had been decided by the DDA and action is now required to be taken as per the Delhi Development Act.

6. Two writ petitions being WP(C) No.3771/2002 preferred by Sukh Ram Gangotia and others, and WP(C) No.3823/2004 preferred by Shri K.P. Bhangalia and others against, inter alia, the DDA were filed in this Court which came to be disposed of by a common judgment dated 20.9.2004 The operative part of the said judgment reads as follows: ‘36. Twin effect of the legal position (i) FAR is available to a group housing complex in the context of total area of the land, (ii) internal arrangements are controlled by the building bye-laws; would require a notice to be issued to the owner of a flat where it is alleged that unauthorized construction has been carried out in the flat. If the owner of the flat seeks compounding of the excess construction, notice would be required to be issued to the cooperative society because issue of FAR affects all other members. The cooperative society, being representative of the interest of all its members, if heard would mean that the interest of all has been taken into account because the cooperative society is expected to act in a representative manner. 37. Writ petitions are accordingly disposed of with a direction to the DDA to grant a personal hearing to all the individual flat owners who have effected additional constructions in their flats. Hearing would be granted to the cooperative society as well. Decision would be taken in the context of the FAR norms. Decision would be taken keeping in view how much excess FAR is to be apportioned to individual flats. Decision would contain reasons and would be communicated to the individual flat owners as well as the society. 38. In the event of excess constructions being declared unauthorized and non-compoundable, there

would be no pick and chose. Non-compoundable excess constructions on the ground floor flats as well as the first floor flats would be demolished simultaneously.'

7. The petitioners state that another writ petition being W.P.(C) No.5493/2005 titled as 'Residents Welfare Association Kangra Niketan Vs. DDA and Anr.' was filed in this Court which was disposed of on 11.11.2005. A copy of this order has been filed as Annexure P-14 to the writ petition. The operative part of this order is set out a little later in this order.

8. The petitioners also make a reference to two Civil Contempt Petitions bearing Nos. 1388/2006 and 1395/2006 which are stated to be pending before this Court. Details of these contempt petitions have, however, not been placed on record, except that, the order dated 09.08.2007 passed in CCP No. 1395/2006 has been annexed to the writ petition as annexure P-16. From this order, it appears that no sanction of the DDA had been taken for the purpose of construction of second floor. The Court observed that the additional FAR permitted by the DDA is to be enjoyed by all the members of the society and not by some of the members only. Thus property of the society appears to have been encroached upon by some of its members. Counsels for the parties sought an opportunity to place a proposal before the DDA regarding the manner in which the access can be provided to the second floor of the premises so that the FAR which was permitted by the DDA can be utilized for the benefit of the society and all its members, and not by few of the occupants on the first floor. The Court also observed that the aspect of encroachment by the ground floor occupants would also be looked into on the next date. The matter was adjourned to 08.01.2008. The petitioners have not placed before the Court the order dated 08.01.2008 passed in the aforesaid Civil Contempt Petition. However in Para 35 of the writ petition the following averment is made: 'that the order passed by this Hon'ble Court on 8.01.08 in civil contempt petitions as stated above wherein it was stated that "unfortunately, till today, the existing managing committee has not been able to sort out the issue inter se its members. Learned counsel for DDA states that as of today there is no proposal pending with DDA for regularization of the constructions effected by the members nor is there any proposal to utilize the excess FAR''

9. It is further stated that the Managing Committee as a last effort to save the society from demolishing of unauthorized construction effected by the members, held a General Body Meeting on 10.02.2008, Annual General

Body Meeting on 22.06.2008 and Special General Body Meeting on 20.07.2008 wherein it was resolved by majority that the proposed and revised drawings for making two or more floors be submitted to the DDA. In Paragraph 40 of the writ petition the petitioner states: 'that the respondent society never intimated Hon'ble court in civil contempt petition No.1388/2006 and 1395/2006 about the directions to DDA of this Hon'ble Court vide order dated 20.9.2004 to grant personal hearing to individual flat owners.'

10. In para 42 it is stated that the affected individual flat owners have not been given a hearing in compliance of the order dated 20.09.2004 as aforesaid. In para 24 of the writ petition it is stated that on 10.09.2008, the petitioners came to know from other members of the society that an Assistant Engineer and Junior Engineer of the DDA had visited the society along with the SHO concerned and that they had informed the members of the Managing Committee that demolition is slated to take place on 12.09.2008. The petitioner state that they are aggrieved by the unjust, arbitrary, illegal and contemptuous acts of respondent no. 1 and the officer bearers of respondent no. 2, and that they have no other efficacious remedy than to approach this Court by way of this writ petition. In ground 'H' the petitioners state as follows: '(H) BECAUSE, the Petitioners were never impleaded as necessary party in the above stated contempt cases and so could not bring to the Hon'ble Court notice the directions passed to respondent DDA to grant personal hearing to individual flat owners of the respondent society before passing any order or demolition. As a consequence the Hon'ble Court in Civil Contempt Cases No.1388 and 1395 titled as RWA versus K.P. Bangalia inadvertently passed order dated 8.1.2008 and 25.7.2008 directing DDA to carry out demolition within 8 weeks.'

11. Learned counsel for the respondent DDA Mr. Gaurav Sarin who appeared on advance notice on 18.9.2008 raised the aforesaid preliminary objection to the maintainability of the petition. After some arguments, the matter was adjourned from 18.09.2008 to 19.09.2008 when further arguments were heard on the objections raised by the learned counsel for DDA. Mr. Sarin also tendered his written submissions on the aspect of maintainability which were taken on record.

12. To appreciate the objections raised by Mr. Sarin it is necessary to state the background in which Contempt Petition No.1395/2006 was filed by the

Residents Welfare Associate of Kangra Niketan, and the orders passed therein from time to time. As noticed hereinabove, W.P.(C) Nos.3771/2002 and 3823/2004 was decided by the learned Single Judge on 20.09.2004 issuing directions to the DDA to grant personal hearing to all the individual owners who had effected additional constructions in their flats. Hearing was to be accorded to the cooperative society as well. Decision was required to be taken in the context of the FAR norms. It was to be decided as to how much excess FAR is to be apportioned to each individual flat. The decision was required to be a reasoned decision, to be communicated to the flat owners as well as to the society. If excess construction was found after the said decision was taken, which was unauthorized and non-compoundable, it was directed that the same be removed without pick and choose. It was the case of the contempt petitioners that the respondent society failed to take necessary actions in compliance of the order dated 20.09.2004 It was also alleged that Sh. K.P. Bangalia and Sh. J.S. Kanwar, the Hony. President and Secretary of the society allowed the members to raise unauthorized construction over the terrace without the same being sanctioned as per law. The resident welfare association further alleged that it had addressed communications to the DDA to implement the order dated 20.09.2004 but that the DDA and the society had failed to discharge their duties. In these circumstances, the resident welfare association had preferred W.P.(C) No.5493/2005 to seek a restraint against the DDA and the respondent society from raising unauthorized construction and for a direction to the DDA to implement to the order dated 20.09.2004 of this Court within a reasonable time. W.P.(C) No.5493/2005 had been disposed off on 11.11.2005 and the operative part of the order read as follows: '4. In view of the fact that as of today respondent No.2 has not obtained any revision in the sanctioned building plans, no member of the society can effect any addition and alteration in the flats allotted. This was the mandate of the order dated 20.9.2004 The mandate has to be complied with. 5. Directions are accordingly issued to respondent No.2 to ensure that no member brings in any construction material within the precincts of the society or the flat allotted to him/her. Respondent No.2 will ensure that no further construction is effected in any flat. As regards the second prayer, in my opinion, it would be advisable to await a decision from DDA in respect of revision sought to the sanctioned plan. Mr. Prag Tripathi, learned Senior Counsel who appears for respondent No.2 submits that the revised plans would be submitted by respondent No.2 within a period of 4 weeks from today. 6. If DDA revises the building plans, constructions already effected in the flats would need to be re-looked. If the excess constructions are within the permissible limits as

per the sanctioned plans, no further action would be required. If the constructions are beyond the sanctions, if at all granted by DDA, excess construction would require to be demolished. 7. In said eventuality directions are issued to respondent No.2 to ensure that such constructions which are beyond the sanctions granted are removed by its members failing which it would be the obligation of the Municipal authorities to remove the excess constructions.'

13. It was further alleged that even after the passing of the order dated 11.11.2005 contemnor Nos.1 and 2 Sh. K.P. Bangalia and Sh. J.S. Kanwar, who are responsible for day to day affairs of the society, being its President and the Hony. Secretary, continued to allow the raising of unauthorized construction in violation of the aforesaid norm. It was further stated that on account of the non-implementation of the order dated 20.09.2004 the Resident Welfare Society filed C.M. No.12812/2006 in W.P.(C) No.5493/2006 seeking implementation of the order in a time bound manner. That application was disposed off by the Court on 16.10.2006 holding that the application is not maintainable. However, it was open to the applicant to seek appropriate remedies through contempt/substantive proceedings. In the these circumstances the aforesaid contempt petition was filed against Sh. K.P. Bangalia, Sh. J.S. Kanwar, the Hony. President and Hony. Secretary of the society and Sh. Dinesh Rai, the Vice-Chairman of the DDA. Reply was filed by contemnor Nos.1 and 2 Sh. K.P. Bangalia and Sh. J.S. Kanwar through their Advocate Ms. Prema Priyadarshini. The affidavits of both Sh. K.P. Bangalia and Sh. J.S. Kanwar were filed in support of the reply. On 03rd/08th May, 2007 C.M. No.6684/2007 was preferred in the aforesaid Contempt Case by three persons, namely, Bimla Sharma, Saroj Sama and Satya Sharma to seek directions to respondent Nos.1 and 2, namely, Sh. K.P. Bangalia and Sh. J.S. Kanwar to grant permission for carrying out urgent repair works in their respective flats. Contemnor Nos.1 and 2 Sh. K.P. Bangalia and Sh. J.S. Kanwar filed their reply to C.M. No.6684/2007 on 08.08.2007. From the reply filed by Sh. K.P. Bangalia and Sh. J.S. Kanwar, it is clear that they supported the said application and sought directions from the Court so that they could issue gate passes for carrying out urgent internal repair works by the individual members of the society.

14. On 08.01.2008 the Court passed the following order: '08.01.2008 Present: Mr. Parveen Mendiratta for the petitioner. Mr. Gaurav Sareen for DDA Ms. Prema Priyadarshini for respondents 1 and 2. Cont. Cas.(C) No.1388/2006 and Cont. Cas.(C) No.1395/2006 ' 1. On 20.9.2004 W.P.(C)

No.3771/2002 and W.P.(C) No.3823/2004 were disposed of. Directions issued were as under :- '37. Writ petitions are accordingly disposed of with a direction to the DDA to grant a personal hearing to all the individual flat owners who have effected additional constructions in their flats. Hearing would be granted to the cooperative society as well. Decision would be taken in the context of the FAR norms. Decision would be taken keeping in view how much excess FAR is to be apportioned to individual flats. Decision would contain reasons and would be communicated to the individual flat owners as well as the society. 38. In the event of excess constructions being declared unauthorized and non-compoundable, there would be no pick and choose. Non-compoundable excess constructions on the ground floor flats as well as the first floor flats would be demolished simultaneously.'

2. To appreciate the directions issued it would be noted that members of Kangra Adarsh Cooperative Group Housing Society indulged in lawlessness. The Managing Committee failed to control the lawlessness. 3. Certain allottees of flats on the first floor raised additional constructions on the terrace above. In retaliation certain members on the ground floor effected constructions on open spaces abutting their flats. The result was a complete chaos. The Managing Committee failed to ensure that no member constructs an inch of additional construction. 4. When the original building plans for the flats were sanctioned existing FAR sanctioned was as per the norms prescribed in the Master Plan for Delhi then in force. By the time the members indulged in lawlessness, excess FAR became utilizable. Vide order dated 20.9.2004 it was opined that benefit of excess FAR cannot be grabbed by the members on first-cum-first serve basis. It has to be utilized across the board for benefit of all the flat owners. 5. In other words, unutilized FAR was treated as a common asset of the society for benefit of all its members. 6. Unfortunately, till today, the existing Managing Committee has not been able to sort out the issue inter se its members. Learned counsel for DDA states that as of today there is no proposal pending with DDA for regularization of the constructions effected by the members nor is there any proposal to utilize the excess FAR. Learned counsel for DDA states that it may be clarified that in that view of the matter it would be permissible for DDA to remove all unauthorized constructions, meaning thereby, such constructions which do not have the sanction of the law would be demolished. 7. Ordered accordingly. 8. It is clarified that it would be open to DDA to remove all unauthorized constructions by such members who have resorted to lawlessness in a society.'

15. Consequently, it was clarified that the DDA could remove all unauthorized construction, namely, the construction which did not have the sanction of law. Pertinently, the order dated 08.01.2008 was authored by Pradeep Nandrajog, J., who was also the author of the initial order dated 20.09.2004 in W.P.(C) Nos.3771/2002 and 3823/2004

16. Though no formal orders were passed on C.M. No.6684/2007, the pleadings in the said application were complete and were before the Court when the order dated 08.01.2008 was passed by the Court. Thereafter, C.M. No.13087/2008 was filed on behalf of the 'Respondent (Managing Committee)' to seek four weeks' time to the applicant to submit revised lay out plan to the DDA and to direct the DDA to accept the same. An interim restraint was also sought against the DDA from taking any steps in compliance of the order dated 25.07.2008, (I may note that the order dated 25.07.2008 recorded the stand of the DDA that the issue of demolition of excess construction was taken up and that an order was passed in February 2008. The file had been called by the Lt. Governor on some representations for review. The file had been received back and that action as per the directions of the Court would now be taken.) C.M. No.13087/2008 was supported by an affidavit of Sh. J.S. Kanwar the Hony. Secretary of the society. It was filed by the same counsel Ms. Prema Priyadarshini, who had been representing Sh. K.P. Bangalia and Sh. J.S. Kanwar. The application was dismissed by the Court on 11.09.2008 by the following order: 'C.M. No.13087/2008 This application has been made by the petitioner under Section 151 CPC. This Court had specifically taken note of the contentions vide its order dated 8th January, 2008 and given directions to the DDA to remove all unauthorized constructions by such members who have resorted to lawlessness in a society. I find no ground to interfere. The application is dismissed.'

17. From the aforesaid narration it clearly emerges that Sh. K.P. Bangalia the Hony. President of the society and Sh. J.S. Kanwar the Hony. Secretary of the society were keen to somehow stall the demolition of the unauthorized constructions in the society. They not only supported the application made by the aforesaid three members, namely, C.M. No.6684/2007, whereby the applicants had sought issuance of directions to carry on repairs in their flats, but they also filed C.M. No.13087/2008, inter alia, to restrain the DDA from proceeding with the demolition with the unauthorized construction. Having failed in their attempt to obtain orders from the Court to restrain the DDA from carrying out the proposed demolition of unauthorized construction in

the society, the present petition has been filed in the name of 24 members/residents of the society, wherein Sh. K.P. Bangalia, the Hony. President has been arrayed as petitioner No.3 and Sh. J.S. Kanwar is conspicuous by his absence amongst the petitioners in this writ petition.

18. As noticed hereinabove, though a reference to the contempt petition Nos.1388/2006 and 1395/2006 has been made in para 32 of the writ petition, neither the order dated 08.01.2008, nor the order dated 25.07.2008 passed in the aforesaid contempt petition have been placed on record though both of them have been referred to in Ground (H). Pertinently, in paragraph 35 of the writ petition, without disclosing the operative part of the said order, only an extract has been set out as reproduced hereinabove. So far as the aspect of filing of C.M. No.13087/2008 by the Managing Committee of the society is concerned, neither the factum of its being filed, nor the factum of it having been dismissed on 11.09.2008 have been placed on record. The statement made in Ground (H) to the effect that the petitioners were not impleaded as parties in the contempt cases and, therefore, they could not bring to the notice of the Court directions issued to the DDA to grant personal hearing to individual flat owners of the respondent society before the passing of any orders of demolition is also clearly contradictory to the record, inasmuch as, K.P. Bangalia petitioner No. 3 herein is the first contemnor/respondent in the contempt petition being contempt case No.1395/2008. Both he and Sh. J.S. Kanwar have filed their detailed replies dated 27.0.2007, apart from a supplementary affidavit of Sh. J.S. Kanwar dated 20.02.2008, a supplementary affidavit of Sh. J.S. Kanwar dated 23.07.2008 and lastly the application under Section 151 CPC on behalf of the 'respondent (Managing Committee)' supported by an affidavit of Sh. J.S. Kanwar. Therefore, to say that none of the petitioners in the present writ petition were impleaded as party respondents in the contempt petition is patently false. Moreover, the statement made in paragraph 40 of the present writ petition to the effect that the respondent society never intimated to the Court hearing the Civil Contempt Petition about the directions issued to the DDA by this Court and its order dated 20.09.2004 to grant personal hearing to individual flat owners is also patently false, particularly to the knowledge of Sh. K.P. Bangalia, petitioner No.3 herein, who had himself filed the reply in the aforesaid Contempt Petition No.1395/2006 clearly bringing out the order dated 20.09.2004 in various portions of the reply, including in para 4 of the preliminary objections and para 8 of the parawise reply. As a matter of fact, the contempt petitioners had themselves made a reference to the said order dated 20.09.2004 and had even filed the copy of the said order alongwith the

contempt petition as Annexure P-11, and the said order was expressly taken note of by the Court while passing the order dated 08.01.2008, as extracted hereinabove. It is clear from the defence raised in the aforesaid contempt petition by Sh. K.P. Bangalia and Sh. J.S. Kanwar as also from the additional affidavits filed on behalf of the contemnors by Sh. J.S. Kanwar, the reply to C.M. No.6684/2007 filed by contemnors/respondent Nos.1 and 2 in the contempt petition, and from C.M. No.13087/2008 filed on behalf of the 'Respondent (Managing Committee)' that the same issues which were raised in all the aforesaid pleadings have again sought to be raised in the present writ petition. In all these earlier filings, the emphasis is on the members being entitled to individual personal hearing and the DDA being obliged to pass speaking orders in the light of the non-compoundable deviations, if any, found in each of the flats individually. It is, therefore, evident that the present writ petition has been drafted and filed concealing and suppressing the various orders passed in the aforesaid contempt petition, particularly, the orders dated 08.01.2008, 25.07.2008 and 11.09.2008 in C.M. No.13087/2008. It is also evident from the way selective and confusing averments have been made in the present writ petition that the concealment, suppression and misstatement are deliberate and cannot be termed as mere inadvertent errors on the part of the petitioners or their counsel. Though the present writ petition has been filed in the name of Mayank Kumar, Advocate, it is pertinent to note that the counsel appearing for the contemnors Sh. K.P. Bangalia and Sh. J.S. Kanwar, Ms. Prema Priyadarshini, Advocate also has the same office address as that of Sh. Mayank Kumar i.e. Chamber No.293. It is, therefore, clear that the same set of lawyers from the same office are representing the contemnors Sh. K.P. Bangalia and Sh. J.S. Kanwar in the contempt petitions, and the writ petitioners in the present petition. It is also important to mention that the present petition was filed on 15.09.2008 i.e. within four days of the dismissal of the C.M. No.13087/2008 on 11.09.2008. Between 11.09.2008 and 15.09.2008 there was no further development since, even according to the writ petitioners, the last development which gave rise to cause of action took place on 10.09.2008. In para 24 of the writ petition, the petitioners state that they came to know on 10.09.2008 that officers of the DDA and police had visited the society and they informed that demolition action was slated for 12.09.2008. The claimed ignorance of the petitioners about the proceedings in the contempt petition, inter alia, in Ground (H) of the present writ petition is also falsified by the fact that a large number of the writ petitioners were signatories to statements authorizing the Managing Committee to request this Court to give sufficient time to finalise, and submit to the DDA revised proposal on the basis of a

compromise proposal. This statement clearly makes reference to the order dated 08.01.2008 as well as to the letter of DDA dated 07.02.2008 and has been filed in the aforesaid contempt petition as Annexure A-7 to the supplementary affidavit dated 20.02.2008 of Sh. J.S. Kanwar, Hony. Secretary.

19. I also note with anguish, the role played by the same set of counsel for the petitioners in the present petition and the counsel for Sh. K.P. Bangalia and Sh. J.S. Kanwar in the aforesaid contempt petitions. As noticed hereinabove, both Ms. Prema Priyadarshini and Mr. Mayank Kumar hail from the same chamber i.e. Chamber No.293, Delhi High Court Lawyers Chambers Block. On 11.09.2008 when C.M. No.13087/2008 was dismissed by the Court hearing the contempt petition, the applicant Managing Committee/respondent was represented by Mr. J.P. Sengh, Senior Advocate and Ms. Prema Priyadarshini. When this matter was first taken up on 18.09.2008, Mr. J.P. Sengh, Senior Advocate, appeared with Mr. Mayank Kumar, Advocate. Even though learned senior counsel cannot be attributed with any objectionable conduct so far as the drafting of the present writ petition is concerned, which involves suppression, concealment and misstatement of relevant material facts, I cannot help but notice that when the matter was taken up for preliminary hearing on 18.09.2004, the learned Senior Advocate of his own accord did not bring to my notice the factum of the dismissal of the C.M. No.13087/2008 in Contempt Petition No.1395/2006 on 11.09.2008, and the fact that the petitioners had not made full and complete disclosures in the writ petition, including in respect of the order dated 08.01.2008 passed in the contempt petition. Even if one were to assume that the learned Senior Counsel was not aware about the content of the order dated 08.01.2008 and the order dated 25.07.2008 passed in the aforesaid contempt petitions, since he did not appear in the contempt petition in those dates, so far as the dismissal of C.M. No.13087/2008 is concerned, he was well aware of the same since he had himself appeared before Court on 11.09.2008, which was merely a week before the present writ petition was taken up by the Court. On being questioned on the aforesaid lapse, all that the learned senior counsel had to say was that the counsel for the petitioner was inexperienced and his lack of experience may have led to full disclosures not being made in the writ petition.

20. I am not at all impressed with the explanation furnished by the learned senior counsel for the aforesaid concealments, suppression and misstatements made in the writ petition by the petitioners. Looking to the

nature of the controversy which involves all the members of the society, and the history of the litigation, I find it very difficult to accept that the petitioners were not aware of the passing of the orders dates 08.01.2008, 25.07.2008 and lastly 11.09.2008 on C.M. No.13087/2008. Pertinently, the petitioners have made a reference to the order dated 08.01.2008, as aforesaid. They cannot, therefore, feign ignorance of the content of the said order. It is also evident from their collective statements authorizing the Managing Committee to approach this Court to seek more time for submission of a compromise proposals above referred to, that they were actively involved in the pending litigation though all of them may not have been personally made parties in the contempt petitions. Sh. K.P. Bangalia, who is petitioner No.3 was very well aware of all the developments, which took place in the aforesaid contempt petition, he being contemnor No.1 in the said contempt petition. Even the counsel for the petitioners, Mr. Mayank Kumar cannot be given the benefit of doubt in the facts of this case. He was obviously aware of the order dated 08.01.2008, but he chose to selectively quote from the said order thereby concealing the most relevant part of the said order. Similarly, the order dated 25.07.2008 was also concealed by the counsel. This conduct is not the result of inexperience but an exhibition of the counsel's myopic street smartness.

21. In *Satish Khosla v. M/s Eli Lilly Ranbaxy Ltd. and Anr.* 71 (1998) DLT 1 (DB), a Division Bench of this Court dealt with a similar situation. The respondent preferred an earlier suit being Suit No.3064/1996. It sought ex parte interim orders to restrain the appellant from giving on hire the lawns, adjoining the cottage in the tenancy of the respondent, for marriages and private parties. The respondent failed to obtain any ex parte orders. Thereafter, the respondent preferred a subsequent suit, being Suit No.261/1997 making a similar prayer for interim relief. On 06.02.1997 the learned Single Judge passed an ex parte ad interim order of injunction against the appellant. The appellant preferred an appeal before the Division Bench and also filed a contempt petition for initiating criminal contempt proceedings against the respondents for having intentionally and deliberately filing the proceedings and application being Suit No.261/1997 and I.A. No.1124/1997. After comparing the various averments made in the two suits, the Court considered the issue whether it was obligatory for the respondent to have disclosed to the Court in the subsequent suit, the earlier suit filed by it and the factum that the Court had not granted any stay in favour of the respondent in the earlier suit. The Court referred to *S.P. Chengalvaraya Naidu v. Jagannath and Ors.* AIR 1994 SC 853, wherein the

Supreme Court held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. 'It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.'

22. The Division Bench held that: ".....by withholding the plaint and the application in the earlier suit from the court and by not disclosing to the Court about the proceedings in the earlier suit and the stay having not been granted to it, the plaintiff/respondent had tried to get an advantage from the Court and was, therefore, guilty of playing fraud on the Court as well as on the respondent.'

23. The Division Bench relied upon the following passage from S.P. Chengalvaraya Naidu (supra): "..... We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

24. The Division Bench further observed that: "..... A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which

are relevant to the litigation and he must also disclose to the court about the pendency of any earlier litigation between the part is and the result thereof. ““..It was only after 20th January, 1997 when the case was adjourned to May, 1997 that the respondent filed the second suit and though in one of the paragraphs it is mentioned that it had filed an earlier suit for injunction, however, it did not disclose to the Court either in the plaint or in the application as to what had transpired in the Court on the dates when the said suit was fixed nor it was disclosed to the Court that injunction has not been granted in its favor by the Court and the relief claimed in the application in the earlier suit was almost similar to the relief which had been claimed in the subsequent suit. In our opinion, it was obligatory upon the respondent to disclose to the Court that in the application filed in the earlier suit a similar relief had been claimed, however, the Court had not granted the said relief. In our view, if these facts were before the Court on February 6, 1997 when the second suit came up for hearing before it, may be Hon'ble the Single Judge was persuaded not to grant any ex parte stay in favor of the respondent. ““““ We are, therefore, of the opinion that the respondent has not come to the Court with clean hands and has also suppressed material facts from the Court with a view to gain advantage in the second suit. This in our view is clearly over-reaching the Court.’

25. On the aspect of role of the counsel for the respondent, the Division Bench held that: ‘As held by the Supreme Court in T. Arivandandam Vs. T.V. Satyapat and Another, AIR 1977 SC 2421, the pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. “It may be a valuable contribution to the cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the beach for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to ex-parte pressure in unmerited cases helps devalue the judicial process.” 20. We are of the opinion that the above noted passage of the aforesaid judgment in T. Arivandandam Vs. T.V. Satyapal's case is fully applicable to the facts and circumstances of the present case.

Having not succeeded in getting stay in Suit No. 3064/96, in our view, the Lawyer should have refused to move an application for stay in the second suit.’

26. The Division Bench held that the respondents were guilty of contempt and that they had made an attempt to overreach the Court by playing a fraud upon the Court and the opposite party. The respondent was, therefore, non suited in respect of the subsequent suit and was warned to be more careful in future. To the same effect is the decision of this Court in Holy Health and Educational Society (Regd.) v. Delhi Development Authority 80 (1999) DLT 207.

27. The Supreme Court in Arunima Baruah v. Union of India (2007) 6 SCC 120 held that ‘so as to enable a Court to refuse to exercise the discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief.’ The Supreme Court also observed that ‘a person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands.’

28. There can be no doubt that the suppression, concealments and mis-statements resorted by the petitioners in the present case are in relation to highly material facts. The petitioners in the present petition are again harping upon the directions issued by the learned Single Judge while disposing off W.P.(C) Nos.3771/2002 and 3823/2004 on 20.09.2004. However, the subsequent orders passed by this Court on 08.01.2008 in the aforesaid contempt case have been suppressed from this Court. While passing the order dated 08.01.2008, the Court took note of the directions issued over three years earlier i.e. on 20.09.2004 and noted ‘Unfortunately, till today, the existing Managing Committee has not been able to sort out the issue inter se its members. Learned counsel for the DDA states that as of today there is no proposal pending with DDA for regularization of the constructions effected by the members nor is there any proposal to utilize the excess FAR. Learned counsel for the DDA states that it may be clarified that in that view of the matter it would be permissible to DDA to remove all unauthorized constructions, meaning thereby, such constructions which do not have the sanction of law would be demolished. Ordered accordingly. It is

clarified that it would be open to DDA to remove all unauthorized constructions by such members who have resorted to lawlessness in a society.’

29. It is evident that the Court had passed the order dated 08.01.2008 after granting more than sufficient time to the society to submit the proposal for regularization to the DDA. However, on account of quibbling between the two factions of the society, namely, the flat owners on the first floor on the one hand, and ground floor on the other hand, the proposal was not submitted within a reasonable time to the DDA in terms of the orders dated 20.09.2004. Obviously, members of the society could not take advantage of this stalemate and continue to retain the admittedly unauthorized constructions raised by them indefinitely. It was in this light that the order dated 08.01.2008 was passed in the Contempt Case.

30. The stand of the DDA that action would be taken to implement the orders of the Court dated 08.01.2008 communicated to the Court on 25.07.2008 was also deliberately suppressed and the same was material and relevant for the purpose of this petition. Last but not the least, the endeavour of the management to seek further time to submit a proposal to the DDA, and in the meantime to seek a restraint against demolition failed on 11.09.2008 with the dismissal of C.M. No.13087/2008. Even this was a highly material fact, inasmuch as, the basis on which this petition has been filed is the same on which the said application was filed. It has not even been argued, and it possibly cannot be argued that the aforesaid facts and circumstances are not material facts for the purpose of deciding the present writ petition. All in all, the conduct of the petitioners in resorting to the aforesaid concealments, suppressions and mis-statements while filing this petition is gross abuse of the process of this Court.

31. The Supreme Court in *Prestige Lights Limited v. SBI* (2007) 8 SCC 449 has held that the High Court while exercising jurisdiction under Article 226 exercises discretionary jurisdiction, and above all, it is a Court of equity. It is, therefore, of utmost necessity that when a party approaches the High Court under Article 226 of the Constitution he must place before the Court all the facts without any reservation. If there is suppression of material facts on the part of the applicant, or twisted facts have been placed before the Court, the writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter. It further held that in exercising extraordinary power the writ Court would bear in mind the conduct of the

party who is invoking such jurisdiction. This rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of the Court by deceiving it.

32. In *T. Arivandandan v. T.V. Satyapal* (1977) 4 SCC 467, the Supreme Court cautioned lawyers by observing that 'It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions.' Unfortunately, I regret to observe that the counsels for the petitioners have not heeded to the aforesaid advice of the Supreme Court.

33. The facts of this case compel me to take note of what the Supreme Court had the occasion to observe in *Sanjiv Datta, Dy. Secretary, Ministry of Information and Broadcasting, In re v.* (1995) 3 SCC 619: '20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a

stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.' Need I say more'

34. Mr. Sarin has also urged that in view of the order dated 08.01.2008 and 11.09.2008 passed in the aforesaid contempt case it is not upon to this Court to entertain the present writ petition. In support of this submission he has placed reliance on three decisions of the Supreme Court, namely, 1992 Supp. (3) SCC 62 *Vikramjit Singh v. State of M.P.*, (1993) 2 SCC 495 *State of U.P. v. Labh Chand* and (2002) 1 SCC 649 *Harjeet Singh v. State of Punjab*. In *Vikramjit Singh* (supra), the Supreme Court held that a thing which could not be done directly could also not be done indirectly otherwise a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another Bench and there would be no end to such attempts. Besides, the entertaining of such multifarious actions was not consistent with judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final and the faith of the people in the judiciary. In *Labh Chand* (supra) it was held that the second writ petition cannot be entertained not because of the learned Single Judge has no jurisdiction to entertain the same, but entertaining of such second writ petition would render the order of the same Court dismissing the earlier petition redundant and nugatory, although not reviewed by it in exercise of its review jurisdiction.

35. In the present case, the earlier orders dated 08.01.2008 and 11.09.2008 emanate from a contempt case and not from a writ petition. However, that to my mind, makes no difference. So long as these orders stand, the petitioner cannot circumvent those orders by filing the present writ petition and that too without making full and complete disclosure thereof; by suppressing relevant facts and circumstances and by misstating the same. The Supreme Court further held that such a thing, if allowed to happen, could result in encouragement to unscrupulous litigants to abuse the process of the High Court exercising writ jurisdiction, in that, any order of any Bench of such Court refusing to entertain a writ petition could be ignored by the petitioner with impunity, and relief sought in the same matter by filing a fresh petition. Such conduct would lead to disorder, confusion and chaos relating to exercise of writ jurisdiction. There would be no finality of an order of the Court refusing to entertain a writ petition. In my view, the said observations

squarely apply even in a case where the earlier proceedings, wherein an order has been passed, is not a writ proceeding under Article 226 of the Constitution, but a contempt case wherein the Court is exercising its power under Contempt of Courts Act and under Article 215 of the Constitution.

36. For all the aforesaid reasons, I am of the view that the present writ petition deserves to be dismissed with exemplary costs. All the petitioners, except petitioner No.3, are at least guilty of making irresponsible statements without proper verification and without making an attempt to enquire into the earlier history of the litigation. As I have already held, the petitioners cannot claim that they were not aware of the passing of the orders dated 08.01.2008 and 25.07.2008, yet these orders were not produced in their entirety before the Court. The timing of the present writ petition also suggests that these petitioners were very well aware of the orders being passed in the contempt case on 11.9.2008. On account of their aforesaid conduct, each of the petitioners, except petitioner No.3, is subject to costs of Rs.3,000/- to be paid into the Prime Minister's Relief Fund within two weeks.

37. So far as the petitioner No.3 is concerned, his conduct is extremely grave and it is clear that he has acted consciously and deliberately with a view to mislead this Court and to suppress relevant and material facts from the Court. He has not filed his affidavit in support of the writ petition. However, that to my mind is not relevant or material. He is aware of the fact that he has engaged the counsel to file the present writ petition, inasmuch as, he has signed the Vakalatnama in favour of his counsel. He is also aware of the fact that the counsel Mr. Mayank Kumar hails from the same office as his earlier counsel Ms. Prema Priyadarshini. He is the Hony. President of the Society and has been spearheading the movements on behalf of the first floor residents/owners of the society. The counsel, it is presumed, acts on the instructions and advice of his clients. No co-petitioner can get away by merely contending that he/she has not filed the affidavit in support of the writ petition, when a charge of suppression and mis-statement has been made. Petitioner No.3 was well aware of the passing of the order dated 08.01.2008, 25.07.2008 and 11.09.2008. He was aware of the fact that the Managing Committee of the society had moved C.M. No.13087/2008 to seek, inter alia, an injunction against the DDA from carrying out demolition activity in terms of the order dated 08.01.2008. He deliberately makes a wrong statement that he was not a party to the contempt case though he was arrayed as contemnor/ respondent No.1 in the said petition. He deliberately

states that the Court hearing the contempt petition was not made aware of the order dated 20.09.2004 in W.P.(C) No.5493/2005, even though the said order was made an annexure to the contempt case and was relied upon by him in his reply filed in the contempt case, and was specifically taken note of in the order dated 08.01.2008 passed in the contempt case. On account of the aforesaid conduct of the petitioner No.3, he is subjected to personal costs of Rs.50,000/- to be paid into the Prime Minister's Relief Fund within a period of two weeks. Proof of payment of costs shall be placed on record within three weeks. In case the proof of payment is not placed on record, the matter be placed by the Registry before the Court. I must also caution the counsels for the petitioners and I hope that in future they would remain conscious of their responsibilities as officers of the Court.

38. Writ petition is dismissed in the aforesaid terms.

Sd/-
(VIPIN SANGHI)
JUDGE